



April 12, 2016

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: WC Docket No. 10-90

Dear Ms. Dortch:

New York State understands that the FCC is considering rules for the reverse auction of Connect America Fund ("CAF") Phase II funds that were previously declined by certain price cap carriers. For the reasons discussed herein, it is paramount that **the Commission adopt rules to ensure that the declined CAF funding be dedicated to fund broadband deployment in the states where the funding was originally allocated.**

These funds are critical for the deployment of broadband services in the New York communities affected by Verizon's 2015 decision to decline Phase II model-based funding. These communities have urgent broadband needs that require substantial funding. Under Governor Cuomo's leadership, New York recently launched its New NY Broadband Program. New York Empire State Development ("ESD"), which is managing the Program, is preparing to conduct an auction later this year to assist unserved and underserved New York communities by distributing up to \$500 million in state funds. These funds will be used to deploy next-generation broadband networks with download speeds targeted at 100 Mbps or better.

New York is concerned that the national auction currently under consideration by the FCC will result in the reallocation of funding that was previously dedicated to New York. The prolonged timeline of the FCC's auction also presents challenges for affected communities and states that are supplementing the FCC's efforts by conducting their own state-funded broadband auctions. To address these concerns, **the FCC should adopt rules that support state-driven approaches to broadband funding that achieve the same or better objectives as the CAF program.** In particular, the Commission should enable states that are conducting their own broadband auctions to access CAF funds directly. As discussed more fully below, partnering with and providing CAF funding directly to states such as New York that are preparing to provide their own matching funds is consistent with the Commission's stated goal of encouraging state funding of broadband development in unserved and underserved communities and will allow New York and other states to quickly implement policies that will make broadband more available in their states. It would also enhance the effectiveness of CAF funds by coordinating them with state broadband programs to fund the deployment of broadband networks in excess of the required 10 Mbps download speeds under CAF across the country.

In the event the Commission is unwilling to partner and coordinate with states, it should, at a minimum, adopt rules that enhance the effectiveness of state-funded broadband programs by (i) awarding bidding credits in the CAF Phase II auction to winners of state broadband funding programs and (ii) implementing a bidding floor to ensure that communities in each state receive the full amount of funding originally allocated to that state under the original CAF Phase II model.

I. Introduction: Broadband in New York

In January 2015, Governor Cuomo announced the \$500 million New NY Broadband Program, which ESD is administering to expand high-speed broadband access in underserved and unserved areas of New York State. Through a reverse auction process, the New NY Broadband Program will issue grants to broadband service providers for the purpose of deploying broadband networks with download speeds of at least 100 Mbps in most areas, and 25 Mbps at a minimum in especially remote areas. The Program aims to provide universal broadband access in the State of New York no later than the end of 2018. It relies on a public-private partnership model that requires service providers to match state funding in order to better leverage Program funds.

In April 2015, the Wireline Competition Bureau announced its allocation of model-based Phase II funding for price cap carriers under CAF. This allocation included \$49 million in annual CAF funding for six years for New York. Four of the five price cap carriers in New York accepted the funds and have put them to work for broadband deployment in their communities. Verizon, for its own commercial reasons, declined to accept the funds as did other carriers in other states, which left a number of communities in New York and across the country without urgently needed broadband funding.

II. The FCC Should Ensure that Affected States Receive the Declined CAF Funds

As other states have suggested, the Commission should allocate declined funds to New York and the other states to which they were originally assigned.¹ While all states are entitled to have the previously allocated funds directed back to their states, New York, as a significant net contributor to Universal Service Fund Programs—with net contributions of over \$1 billion over the past five years—has a particularly strong claim to receive the full amount previously allocated to it. New York recognizes that the Commission must ensure that scarce CAF funding is efficiently allocated, but communities in desperate need of broadband services should not be penalized by carriers' individual choices. If not for one carrier's decision to turn down CAF Phase II funding, \$28.4 million would have been used annually to bring broadband to communities in New York for each of the next six years. New York thus requests that the FCC ensure that the full amount previously offered to provide broadband service to

¹ See Letter from Sens. Roy Blunt and Claire McCaskill to Tom Wheeler, Chairman, Federal Communications Commission, OL Docket No. 16-9 (Feb. 25, 2016), at p. 1 ("We understand the FCC is considering rules for the reverse auction of remaining CAF II funds, and there is roughly \$400 million available over the next ten years to bring broadband to unserved parts of Missouri. It is paramount this funding be reserved solely for Missouri."). See also Letter from Michael R. Peevey, Chair, California Broadband Council to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (Sep. 19, 2014), at p. 2 ("For CAF wireline support, only Frontier elected to receive Phase I Round II support We expect, and need, significantly more money for broadband in California.").

certain communities in New York is allocated for New York State. We respectfully submit that allocating this amount for New York is in the public interest as the Commission has already determined that putting these funds to use for broadband deployment in New York is an efficient and effective use of CAF funds.

To facilitate the deployment of these funds, the FCC should partner with states that are prepared to disburse the declined funds quickly.² As commenters in this proceeding have previously stated, “states are better suited than the Commission to effectively administer funding.”³ The CAF Phase II auction rules could directly allocate to states matching funding in the amount previously allocated to price cap carriers in the CAF Phase II model-based funding round. In return, states receiving such funding and declining to participate in the auction would commit to (i) allocating such funding solely for the purposes of building out broadband to unserved or underserved communities within that state in census blocks where CAF Phase II model-based funding was declined; (ii) meeting or exceeding all FCC broadband service standards; and (iii) satisfying oversight and/or procedural requirements put in place by the FCC and states to ensure proper use of the funds.

III. A Nationwide Auction Would Not Support the FCC’s Goal of Rewarding State Programs that Promote Broadband Deployment

Since August 2015, the Commission has been working to determine how to reallocate the declined funds. As part of this effort, the Commission has been reviewing options for how to implement the competitive bidding mechanism that it concluded would be used to allocate any declined CAF funds.⁴ At the beginning of this proceeding, the Commission proposed a tentative solution to these questions by stating that in “areas where the price cap ETC declines to make a state-level commitment,” the FCC will “conduct competitive bidding to award support using the same Federal Communications Commission areas identified by the CAF Phase II model as eligible for support.”⁵

Notwithstanding its prior statements, the Commission apparently is now considering a competitive bidding mechanism that would *not* ensure the allocation of all declined Phase II CAF funds to the same communities identified by the CAF Phase II model. The approach under consideration would instead allocate funding through a nationwide reverse auction in which

² At a minimum, states with a pre-existing mechanism for the disbursements of funds and a commitment to state-level funding of broadband deployment should be permitted to elect such block grants. Programs such as the New NY Broadband Program provide a convenient pre-existing mechanism for the allocation of funds within states such as New York: i.e., the FCC could allocate such funds directly to the New NY Broadband Program for distribution through its pre-existing reverse auction.

³ See Comments of the Massachusetts Department of Telecommunications and Cable (“MDTC”), WC Docket No. 10-90 (Apr. 15, 2011), at pp. 17-18 (“The MDTC reiterates its position that ‘states are better suited than the Commission to effectively administer funding’” and urges the Commission to first consider allocating any funding directly to the states to determine and oversee funding recipients.”).

⁴ *In re: Connect America Fund*, WC Docket No. 10-90, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking (June 10, 2014) (“*Further CAF Order and NPRM*”), at ¶¶ 224-234.

⁵ *In re: Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking (October 27, 2011) (“*USF Transformation Order and NPRM*”), at ¶¶ 1191 (emphasis added).

providers in different states bid against one another for the declined CAF funds, with the potential consequence of New York State communities losing their allocated funds and remaining unserved.

New York State strongly urges the Commission not to pursue such an approach, given that it never sought formal comment on a nationwide auction in this proceeding and indicated that affected communities would still receive declined funds. The approach under consideration would undermine the Commission's stated goal of ensuring universal broadband deployment and would allow a private carrier's self-interested decision to have harmful consequences for public funds and the public good. The decision of a telecommunications carrier to decline broadband deployment funding should not jeopardize the funding already allocated for New York communities who need broadband.

Perhaps most importantly, such an approach would not support the FCC's longstanding goal of rewarding states that have contributed their own funding to, and developed their own expertise in, deploying funding to unserved and underserved communities. In its most recent NPRM requesting comment on Phase II CAF funding deployment, the Commission indicated that it was "particularly interested in proposals that would encourage contributions from state and Tribal governments or entities."⁶ In previous proceedings allocating universal service funding, the FCC has explicitly recognized "the role states can and do play in spurring broadband connectivity" by advancing additional funding to states with their own programs.⁷

IV. If the FCC Declines to Reconsider its Auction Plan, It Should, at a Minimum, Ensure that the Auction Design Supports State Broadband Funding Programs

If the Commission decides to proceed with its contemplated nationwide auction, it should, at a minimum, adopt rules to ensure that the auction does not impede state-funded broadband programs. These proposals would at least help the auction further two of the Commission's expressed goals: (i) supporting states that have already established their own broadband programs and (ii) using "bidding credits to effectuate priorities that advance [FCC] objectives."⁸

1. The FCC Should Award Bidding Credits to Winners of State Funds

To ensure the most efficient use of federal and state broadband funds, the Commission should award bidding credits to carriers that have independently committed funding for broadband deployment through their participation in state-funded programs. The Commission could award such bidding credits in a number of ways:

⁶ *Further CAF Order and NPRM* at ¶ 305 (discussing proposals for funding rate-of-return carriers).

⁷ *See In re: Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, *Connect America Fund*, WC Docket 10-90, Second Report and Order and Order on Reconsideration (Dec. 11, 2014), at ¶ 56 ("To encourage state participation, beginning in funding year 2016, we will increase an applicant's discount rate for special construction charges up to an additional 10 percent in order to match state funding the applicant receives on a one-dollar-to-one-dollar basis.").

⁸ *Further CAF Order and NPRM* at ¶¶ 232-33.

- For each dollar committed by the carrier in a state auction for the deployment of broadband in CAF Phase II census blocks where funding was declined, the Commission should credit that carrier a dollar in its bid for federal funding in that same census block.
- For each dollar contributed by the state to the carrier in such census blocks, the FCC could offer the carrier a similar credit.

By providing bidding credits to carriers funded by states, the Commission would: (i) enable federal funding to align, to a certain degree, with state broadband funding to enable a superior broadband service outcome within the unserved census blocks (rather than risk the inefficiency inherent in two separate and uncoordinated auction processes); (ii) spur states to develop their own broadband funding programs; and (iii) encourage future federal-state partnerships on matters of significant public interest.

2. The FCC Should Adopt a Bidding Floor

The Commission should implement an auction bidding floor to ensure that no affected census block receives less funding than was originally allocated under the CAF Phase II model for that census block. Without a funding floor, a nationwide auction could result in some affected census blocks not receiving CAF funds. As with bidding credits, the Commission could structure the funding floor in multiple ways, but a simple funding floor would operate as follows:

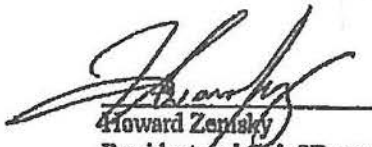
- For each census block, the Commission would calculate and announce an individual floor based on the CAF Phase II model funding for that area.
- The first carrier to bid to the floor for an individual census block would receive the funding for that census block and would accordingly be required to satisfy the buildout obligations.

A funding floor would ensure that every unserved or underserved census block is guaranteed broadband deployment funding. By basing the auction floor on the original Phase II model for allocating funds, the Commission would also be able to account for the significant differences in the cost of deploying broadband to different communities.

V. CONCLUSION

For the reasons discussed in this letter, New York respectfully requests that the Commission reconsider its nationwide auction plan and instead directly allocate CAF Phase II funds to those states that are prepared to disburse broadband funding directly. Alternatively, at a bare minimum, the Commission should structure the CAF Phase II reverse auction to (1) include bidding credits for those carriers receiving state funds to deploy broadband to unserved and underserved communities and (2) set an auction floor for each CAF covered census block. To ensure that New York and other states can effectively implement policies to quickly bring broadband to unserved and underserved communities, we respectfully request that the Commission promptly issue a decision in this proceeding regarding the rules of the CAF auction.

Respectfully submitted,



Howard Zensky
President and Chief Executive Officer
Empire State Development



Audrey Zeldman
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